



**UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/509,126 03/22/00 JONES

G 6010-4074

EXAMINER

MM91/0720

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ART UNIT

PAPER NUMBER

2856

DATE MAILED:

07/20/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Advisory Action**

Application No.

09/509,126

Applicant(s)

JONES ET AL.

Examiner

Michael Cygan

Art Unit

2856

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 July 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: 23.Claim(s) rejected: 1-22 and 24-26.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other:

Continuation of 5. does NOT place the application in condition for allowance because: the art properly combined in the applied rejections makes obvious the claimed invention. It is noted first that no mistake was made in the action on page 7; Gopinathan's technique uses selected frequency ranges AND produces amplitude versus time data. This is clearly shown in the specifically referenced lines and it is not understood what the applicant's misunderstanding is based upon. In the remaining arguments, applicant addresses the non-combinability of de Boer and Gopinathan, which was addressed in the previous Office Action. The examiner further points out that the test for obviousness is not whether the features of a secondary reference (i.e., reactions of particles, etc.) may be bodily incorporated into the structure of the primary reference... Rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871,881 (CCPA 1981). See also *In re Sneed*, 710 F.2d 1544, 1550, 218 USPQ 385, 389 (Fed. Cir. 1983) ("[I]t is not necessary that the inventions of the references be physically combinable to render obvious the invention under review."). Gopinathan is applied to de Boer to teach that, in an acoustic scattering detection of agglomerated particles, a frequency range can be selected in which the magnitude of the scattered signal is resolved at scattered frequencies. The teaching is properly motivated and combined as set forth in previous Actions, and the rejection stands. With respect to the double patenting rejection, it is certainly well known in the art to use Fourier transforms as well as averaging and use of such well known techniques would be obvious to one having ordinary skill in the art.

MTC



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